Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associate with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	**CC Docket No. 98-171**
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	**CC Docket No. 90-571**
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	**CC Docket No. 92-237** **NSD File No. L-00-72**
	)	
Number Resource Optimization	)	**CC Docket No. 99-200**
	)	
Telephone Number Portability	)	**CC Docket No. 95-116**
	)	
Truth-in-Billing and Billing Format	)	**CC Docket No. 98-170**

To: To the Commission

REPLY COMMENTS

WebLink Wireless I, L.P. ("WebLink"), by its attorneys, hereby submits its Reply Comments pursuant to the Second Further Notice of Proposed Rulemaking, released on December 13, 2002 as modified by DA 03-203 dated January 24, 2003 in the above-captioned proceeding, in connection with the reform of the revenue-based contribution mechanism of the Universal Service Fund ("USF") program. [1]

In support, the following is respectfully shown.

I. DISCUSSION

A. Comments on the Second FNPRM

1. Most Commenters Oppose Per-Connection Contribution Methodology.

Of the approximately fifty commenters in this phase of the proceeding, only eight parties advocate radical change to the USF contribution methodology.[2] These parties are objecting to the revenue-based format on the alleged basis that it is not sustainable. However, these eight parties differ, depending on their business operations, on the form of per-connection contribution method they support.

Qwest states that "most parties agree" that there should be change to a connection-based mechanism, despite the fact that this opinion is in the small minority. It promotes a hybrid version that was not even on the table. Sprint and WorldCom state that the Coalition for Sustainable Universal Service ("COSUS") proposal is the most efficient system. AT&T and Ad Hoc Telecommunications Users Committee want the number based connection method; while

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1 Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("Second FNPRM").

2 Comments of Qwest Communications International Inc. ("Qwest"), WorldCom, Inc. ("WorldCom"), Sprint Corporation ("Sprint"), AT&T Corp. ("AT&T"), United States Telecom Association, NRTA and OPASTC0, The Ad Hoc Telecommunications Users Committee ("Ad Hoc") and SBC Communications and BellSouth Corporation ("SBC/BellSouth").

US Telecom Association, NRTA and OPASTCO and SBC/BellSouth state that the SBC/BellSouth access and transport proposal should be the chosen method.

The revealing fact is that there is not even a consensus among the parties that want to replace the revenue-based system. Significantly, the reason for this lack of unanimity appears to be that each proponent puts forth its own proposal to shift its USF burden to other telecommunications carriers, generally to the CMRS operators. For example, the number based connection proposal is offered by AT&T who does not hold numbers for its operation; and the access and transport proposal is advocated by local exchange carriers ("LECs") without interexchange service who would be assessed only one unit, while wireless telephone carriers and two-way messaging carriers would be assessed for both access and transport.

The fact remains that most commenters in this proceeding from May 2001 to the present have consistently supported the revenue-based contribution mechanism.[3] And many of these commenters have argued that the connection-based proposals are legally flawed because: (i) they do not include every provider of interstate telecommunications and they would collect funds from intrastate revenue, contrary to Section 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. §254(d); and (ii) they are in violation of Section 254(b)(4) because contributions would not be assessed on a non-discriminatory basis, i.e., wireless carriers would pay a disproportionate portion of the USF funding burden.[4]

The consensus of the commenters, including WebLink, is that the Commission should remain with the revenue-based system; continue to streamline it as needed; and add new

3 See Comments of Metrocall Holdings, Inc. ("Metrocall") at 4.

4 See, for example, Comments of Verizon Wireless ("Verizon") at 2-4.

participants. Most want to retain the status-quo and WebLink agrees. There is no mandate for a radical change in the USF methodology.

2. **The Proposals Lack Details Necessary for Careful Analysis.**

In addition to the apparent illegality of the connection-based proposals which may cause possible challenges and litigation, several commenters state that the details were too sketchy for analysis of the impact of the proposals and that the few details there are raise significant additional questions. For example, Arch asserts that it could not comment on the access and transport proposal because the Second FNPRM provided too few details; and the telephone number proposal was so lacking in basic information that it was impossible to comment on it.[5] Verizon states that the connection-based methodology with a mandatory minimum obligation is unexplained and that the telecommunications carriers who might be assessed an annual minimum contribution are not specified, "providing no way for parties to evaluate whether the overall proposal includes all providers of interstate telecommunications service…." It adds, "unexplained assumptions that are not grounded in fact, data or legality underpin this scheme."[6] Nextel asserts that "the connection-based proposals are not ready for prime time."[7] And Allied states that imposing any new connection-based program would be "rife with uncertainty, difficult to verify."[8]

WebLink submits that much of the uncertainty would arise from the lack of precise details in the proposals, which appear to be less than clearly thought-out and hastily assembled.

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5 Comments of Arch Wireless Operating Company, Inc. ("Arch") at 9-10.

6 Comments of Verizon at 8-10.

7 Comments of Nextel Communications, Inc.("Nextel") at 10.

8 Comments of Allied National Paging Association ("Allied") at 4.

Ultimately, the lack of details and unexplained and inaccurate assumptions could cause a "gaming" of the USF system because "[a] contribution methodology based on arbitrary weighting of burdens is easily manipulated to benefit individual carriers or classes of carriers."[9] Accurate data is required to conduct a complete evaluation of the three connection-based proposals.

3. There is No Compelling Need to Make A Radical Change.

Although the eight proponents emphasize the necessity for immediately changing the methodology, most of the commenters urge the Commission to study the results of the modified revenue-based system to determine if the perceived inadequacies have been overcome. CTIA urges the Commission to give the modified revenue-based assessment system a reasonable opportunity to work.[10] Verizon "questions why the Commission must move to discard the revised, revenues-based system put in place by December 31, 2002 Report and Order before the ink on that system is barely dry…"[11]

Nextel states that the changes, first to the modified revenue-based mechanism and then to a connection based mechanism, would cause all carriers "massive problems" with billing systems and increased expense in a time of economic malaise in the telecommunications industry:

> carriers, who, having just educated customers about the switch to a proscriptive, usage sensitive line item for USF cost recovery, must then switch to yet another form of USF line item cost recovery entirely divorced from usage on any line (or any mobile phone unit) in any given month. A succession of regulatory changes would cascade into a series of customer line item changes,

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[9] Comments of Verizon at 13.

[10] Comments of Cellular Telecommunications & Internet Association ("CTIA") at 2.

[11] Comments of Verizon at 2.

adding costs on carriers and creating unnecessary confusion for consumers.[12]

WebLink agrees with Nextel that customers would be displeased by the changes; and the administrative burden establishing procedures and monitoring the parameters would be enormous. The burden of maintaining and enforcing compliance on a connection-based methodology would affect both the carriers and the Commission.

Allied states that there appears to be no practical or legal rationale to change the revenue-based mechanism; that the "Commission has recognized and utilized revenue-based assessments to ensure fair, non-discriminatory and competitively neutral surcharge and cost-recovery models"; and this mechanism is used for both FCC and state imposed surcharges.[13]

Arch adds that nothing has occurred that alters the FCC's rejection of non-revenue based methods five years ago; that the record supports retention of the gross revenue approach and that the inequities and administrative burdens of the alternative methodologies require that the revenue-based methodology be maintained.[14]

Some commenters argue that maximizing the contributors to the USF would be a better alternative than a dramatic change in methodology. Verizon suggests that the Commission expand the base of the contributors to include all providers of interstate communications services.[15] Arch states that "excluding industry segments that rightfully should contribute under Section 254 would be inequitable and discriminatory vis-à-vis those that do contribute." [16]

12 Comments of Nextel at 5.

13 Comments of Allied at 12.

14 Comments of Arch at 2.

15 Comments of Verizon at ii.

16 Comments of Arch at 11.

WebLink agrees that expanding the base of contributors would be a more efficient approach than dismantling a known system.

4. **Commenters Urged Caution .**

Many commenters urge that the Commission use caution in making radical changes in the USF methodology. CTIA recommends that the Commission take a "deliberative and careful approach in studying this issue" to ensure fairness.[17] Nextel has consistently urged the Commission to proceed cautiously.[18] Metrocall asserts that the Commission should provide analysis to show that the revenue-based mechanism is not working before making a radical change of methodology.[19] WebLink also urges that the Commission take a cautious approach in this matter and insure that fairness to all telecommunications carriers is the result in this proceeding.

B. **Comments on the Staff Study Regarding Alternative Contribution Methodologies**

1. The Staff Used Historical Revenue Data in Messaging Projections.

In its analysis of the alternative contribution methodologies, the Staff Study used Number Resource Utilization and Forecasting ("NRUF") figures.[20] These figures are historical data that must not be used in making units in service ("UIS") projections, at least with respect to messaging. As WebLink has pointed out in its Comments and other commenters confirm, the

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17 Comments of CTIA at 4.

18 Comments of Nextel at 8.

19 Comments of Metrocall at 7.

20 Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies, FCC 03-31, released February 26, 2003 ("Staff Study") at 12.

messaging industry continues to decline.[21] Thus, any use of past data is not appropriate because it is no longer valid. Further, one of the modifications to the present USF system in the referenced Report and Order was the change to projected revenue data because carriers complained that a past snapshot could not reasonably foretell future revenues in a volatile market. Likewise in this case, use of historical data is not relevant for any analysis of the messaging industry.

Additionally, WebLink submits that the Staff Study assumption regarding the average revenue per unit ("ARPU") for messaging is incorrect.[22] In February 2002, for example, the Commission used $0.07 ARPU per month under the current system, based on an average messaging bill of $8.00 per month, the 12% interstate safe harbor and the USF contribution factor of 6.808%.[23] The Staff Study, however, uses a $9.50 per month messaging invoice,[24] a **16%** interstate allocation and USF contribution factor of 8.00% for one-way. Thus, given these assumptions -- which WebLink submits are incorrect, as well as the flawed units in service and ARPU data, it is impossible to determine what the conclusions of the Staff Study mean and what the costs will actually be in the three scenarios.

Additionally, in WebLink's experience, the Staff Study estimate for two-way messaging monthly revenue has significantly overstated the actual two-way messaging revenue per month. Further, the Staff Study assumes that two-way messaging units are comparable to wireless telephones by proposing an assessment of an access and transport connection for both. The Staff

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21 Comments of WebLink at 5; Metrocall at 11; Arch at 2-3; Allied at 14.

22 Staff Study at 15.

23 Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43, 17 FCC Rcd 352 at ¶59.

24 This figure is derived from 2001 Forms 499-A, historical data that should not apply to 2003 projections.

Study assumption is wrong. As argued in the Comments, two-way messaging devices use no more than one-tenth of a CMRS voice connection.[25] Thus, two-way messaging units are **not** comparable to wireless telephones. To make the same assessment on a two-way messaging device and a CMRS telephone is grossly inequitable.

Finally, the Staff Study projects increases in messaging contributions. As the messaging carriers have consistently pointed out in this proceeding and as the staff itself acknowledges, the messaging industry is in a tenuous state.[26] Carriers still generate much of their revenues from one-way messaging.[27] However, the one-way messaging market is more susceptible to churn.[28] What gains the industry makes in two-way messaging, it churns in one-way. Yet, the Staff Study projects increases in USF assessments for messaging companies. While the messaging industry has not asked the government for handouts, it certainly should not be subject to increased assessments. As previously argued, messaging companies have no "play" in their subscriber charges to pass along additional USF assessments.[29]

C. The Commission Should Not Further Harm the Messaging Industry

WebLink urges the Commission not to exacerbate the fragile state of the messaging industry by assessing higher and additional charges for messaging services that use such a small share of the public switched telephone network ("PSTN"). The average messaging connection

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25 Comments of Arch at 6.

26 Staff Study at 14.

27 Comments of Arch at 2-3 n.5.

28 Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Seventh Report, 17 FCC Rcd 12985, 13049-50 (2002).

29 Comments of WebLink at 5.

to the PSTN is 15 seconds.[30] On that basis, the Commission should reduce the USF rate, not increase it. Messaging uses the network efficiently and provides a low-cost service alternative to wireless telephone service. That low cost service, and the public that benefits from it, should be protected from increases by regulatory actions. Moreover, because messaging carriers cannot

30 Id.

assess the jurisdictional nature of messages, they require a safe harbor. The safe harbor, which is based on actual messaging carrier data, should remain at 12%. WebLink requests that the Commission affirm its policy to avoid commercial disadvantage in the marketplace.[31] It urges the Commission to preserve the status-quo for messaging

III. CONCLUSION

WebLink respectfully requests that the Commission consider the majority view and not adopt any of the proposed connection-based methodologies; that it continue to use revenue-based mechanisms; that it not raise assessments for messaging; and that it retain the safe harbor for messaging carriers.

Respectfully submitted,

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Dated: April 18, 2003

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31 Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 38 (1997)